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FCC COMMUNICATIONS

Subject : WT DOCKET NO. 97-81

April 18, 1997

Office of the Secretary
Federal Communications Commission
Washington DC 20554

Re. Amendment of the Commission's Rules Regarding Multiple Address Systems.

As signing partner for Mind Communications, an MAS Applicant, I wish to provide appropriate comments, reasoning and facts which, taken together, unmask a totally unacceptable failure in the fiduciary responsibilities of the FCC.

Even if not intentional, performance of the FCC in the matter of MAS has been one of (A) discrimination (B) inconsistent performance (C) conscious and deliberate consignment of MAS to the shelf, while more favored projects were promoted. (D) the appearance (and perhaps the fact) of conspiracy to defraud MAS investors.

GRANTED THESE ARE STRONG STATEMENTS. I am sorry it is necessary to back them up with facts, common sense and sound reasoning. The assembled case presented below consists of a concise review of the history of MAS followed by an analysis and critique of the shallow bases presented by the FCC as "reasons" for the amended rules proposal and, finally, by a point by point case for the discharging of the proposed amendment.

In conclusion I will also call to your attention that, should you somehow succeed with your scheme to disenfranchise the MAS Investors, it will cost more than simple return of fees paid in over five years ago. **THAT IS INSUFFICIENT COMPENSATION.** Like any other entity you will be liable for compound interest dating from the closing of the filing windows which closed in Feb. 1992. Further, because the FCC broke its own precedents and wilfully discriminated against the MAS Investors, there is also a proper consideration of the penalty **YOU SHOULD IMPOSE ON YOURSELF** in order to make MAS investors whole. We hope you don't need our help on penalties.

It is, indeed, a sorry thing to see a government agency solicit contributions, set rigid and formal rules, collect and spend millions of dollars and then contemplate default.

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Concise review of the history of the MAS process

Having more or less completed the Cellular lottery process, the FCC moved another project onto the table in late '91 : MAS. Rule making was completed that Fall. The filing windows were set. The filing process was complete in early '92. The money had been collected. The PROCESS WAS COMPLETED. All that remained was the actual lottery. The date was delayed and, in fact, is still not set. This was unfinished Commission business, but a de facto contract was in place between the FCC and MAS Investors. It is worth noting that MAS was a "small" project by FCC standards. It is also worthy of note that the rulemaking had improved. MAS applicants understood they were required to build out their cells within a short time frame.

Meanwhile a much bigger project had been put on the table by the FCC : IVDS. IVDS started later and the process was not complete until well after MAS was closed. Even so, this FCC lottery was pushed along on a fast track. The first 10 markets were actually lotteried. Then the lottery process came to a screeching halt under pressure from the new Clinton / Gore / Hundt regime at the FCC. The lobbying efforts were high powered and the balance of the IVDS markets were "auctioned". The "deep pockets" people were having a field day. The emerging PCS project was converted to auction. MAS, however, was not touched. It was a "done deal" and there were Commissioners at the FCC who recognized and accepted that reality. Of course, the administration people refused to accept even a small defeat -- however proper it was.

MAS was put on the far back burner by the FCC. Over four years have now passed and the FCC apparently feels it can get away with something it knew was wrong -- AND IS STILL WRONG. If this matter were in the private sector, there would be no legal basis for what has been done. MAS would be done as agreed or there would be a positive solution available in a court of law. Even in the public sector there are some significant potential legal remedies. CONSPIRACY by government agents is one area of high potential in the legal arena. Do Clintonites need more trouble ?

To summarize : MAS was a completed process in Feb. '92 --- IVDS was on a fast track and would soon be a completed process --- the first 10 IVDS markets were, in fact, lotteried. THIS EFFECTIVELY GRANDFATHERED MAS AS A LOTTERY. Time may have passed but the facts have not changed. The law under which the FCC claims the right to amend the MAS process did not exist at the time the MAS process was complete, nor was it in effect when 10 IVDS markets were lotteried.

FCC has deliberately conspired to delay the MAS process until it could be slipped through under a law that was not applicable when MAS Investors were entitled to their lottery. **The proposed amendment is discriminatory in fact, does not have a sound legal basis and is proceeding after conspiratorial delay. It is of appeal to "deep pockets" people but very damaging to MAS Investors.**

An Analysis and Critique of the shallow bases presented as FCC Reasons

The FCC Amendment reasoning is based on a number of postulated "reasons" ---

- #1 - It is contended that the "large" number of pending applications and potential markets would result in greatly increased processing costs and --- delaying of service by using a lottery rather than an auction.

COMMENTARY: Having forced this "public service" to sit on the shelf for about five years, it is **IRONIC AND CONTRADICTIONARY FOR THE FCC TO PROPOSE "SPEED" OF AVAILABILITY** as a reason for choosing "auctions". This "public service" would have been an accomplished reality within two years had the process gone forward in a reasonably businesslike manner -- not due to any high minded and devoted Investors, but, rather, due to the mandatory fast build-out mandated by improved rule making by the previous FCC Commission.

Further, on the same point, the "lottery list" is already available for dispatch and it is the FCC which has deliberately (and without adequate reasons) withheld the MAS lottery list. **ITS A FACT : THE LIST IS THERE AND 60 DAYS AFTER RELEASE OF THE LIST A LOTTERY COULD BE HELD.** There is no way an auction could be organized and held in 60 days. Rule making is not close to being completed -- much less execution of an auction plan.

In addition, it does not take a mental giant to conclude that a process whose costs have already been absorbed **WILL COST LESS** than a process whose costs have yet to begin.

Conclusion: The FCC positions on "extra costs" and "slower service" are **CONCLUSIVE POINTS AGAINST AN AUCTION AND FOR A LOTTERY.** (not the other way around as contended by the FCC and its lobbyists)

- #2 - FCC claims that we (the MAS applicants) could have filed for other spectrum.

Commentary: One has to wonder, at times, if FCC apologists have actually gone "brain dead" -- or if this idea is supposed to be believable and intelligent.

Many of our members have opted for other FCC projects and many have not. **ONE THING IS CERTAIN : IT IS NOT THE PROVINCE OF THE FCC TO INSTRUCT INDEPENDENT INVESTORS ON WHAT THEY SHOULD (OR SHOULD NOT) INVEST IN.** If the FCC had advice to offer its clients, it is certainly true that they should have dispensed it. In the case of MAS, it is most clearly and irrevocably certain that the FCC did not so much as even suggest how its potential investors should approach the options.

Actually, that is the only good part of this whole area of the commentary. FCC had no business commenting on which of its various projects investors should go for -- and which should be avoided. It did not do so and that is to its credit. There were perfectly good reasons for liking MAS -- one of which was the option to be a bigger fish in a smaller pond. Even an FCC apologist should be able to see that.

Conclusion: Of all the weak minded, essentially brain-dead, type positions I have ever seen taken, this -- "you could have opted for something else" -- will rate high on my list of brain-dead reasons -- for doing (or not doing) anything. PEOPLE INVESTING IN MAS HAD VERY GOOD REASONS TO DO SO.

THE BREAKDOWN HERE IS IN FCC MANAGEMENT AND / OR ETHICS.

#3 - The FCC contends that there is significant conflict between the previous "specific site" licensing and the present "geographical area" licensing. The implication is that the two approaches are incompatible. THE IMPLICATION IS NOT TRUE. All that is required is to conform the specific sites to their respective geographic areas and move ahead.

Commentary: This is clearly a contrived "non-problem" repackaged and then presented as a complex issue -- which it is not. One can only wonder how many hundreds of thousands of tax payer dollars were wasted in a bull headed, obtuse and wilfull drive to let the FCC have its way -- NO MATTER HOW WRONG.

Conclusion: It is most obvious to any clear thinking, fair minded persons that the FCC has failed to develop a single valid reason for overturning its "unfinished business" -- IE. the implementing of the 5+ year old MAS lottery program.

Between the lines is the outline of beaureaucrat / lobbyist conspiracy: "We want to change this even if it is wrong and even if it is too late. We don't care who is injured or what is the right thing to do." WE WANT IT AND THAT'S THAT. This garbage approach to government only works when those affected are not watching carefully and / or are not prepared to take aggressive action if needed. WE HAVE BEEN WATCHING. WE ARE PREPARED. ONE MORE MAJOR EMBARASSMENT FOR "THE FRIENDS OF BILL" IS IN THE WORKS.

A point by point case for rejecting dismissal of the MAS applications

- * Whereas, the FCC has failed to honor its fiduciary responsibilities in the handling of MAS applications -- by refusing to move them through the lottery process in a systematic, reasonably timely and reasonably professional manner.
- * Whereas, the FCC has discriminated against MAS by refusing to hold the lotteries.

- * Whereas, the FCC discrimination is so extensive as to exceed five years in time.
- * Whereas, the FCC did "fast track" another spectrum (IVDS) and actually conducted lotteries for it long after the MAS process was complete.
- * Whereas, the FCC has treated the MAS process as something to be ignored, while holding the Investors money as though it belonged to the FCC without obligation.
- * Whereas, since the FCC did conduct lotteries for a spectrum processed at a later date, it has, by its own action, "grandfathered" the right of MAS applicants to a lottery.
- * Whereas, the action / inaction of the FCC in putting the MAS applicants on a back shelf can be none other than a conscious and deliberate case of discrimination.
- * Whereas, the FCC "reasons" for amending MAS rules are so pathetically shallow and lacking in substance as to constitute nothing more than indefensible excuses.
- * Whereas, the summation of the points itemized above constitutes, at the very least, the appearance and likelihood of conspiracy at one or more levels of the FCC --- such conspiracy signals are not limited to FCC members and staff -- and could well extend further up the level of government. This likelihood needs to be investigated. The common personal objectives of several key "money raisers" are well known.

Therefore it is proposed that the following actions be taken on this matter--

- # 1 - Disapprove the amendment as wholly lacking in merit. It is an embarrassment.
- # 2 - Demand short term activation of the "grandfathered" MAS lottery. Issue the lists quickly & trigger the 60 day start period. Finalize this old Commission Business.
- # 3 - Order a formal apology by the FCC to the patient, loyal and involved Investors who still believe that most things in the USA are, eventually, done right.

Thank you for your time in digesting this extensive document.

Sincerely,



Robert E. Ryan
Signing Partner, MIND Communications